[2002] QCA 104

COURT OF APPEAL

McMURDO P
BYRNE J
PHILIPPIDES J

CA No 334 of 2001

THE QUEEN

v.

MARK LESLIE SENIOR

BRISBANE

..DATE 20/03/2002

JUDGMENT

PHILIPPIDES J: This is an application for leave to appeal against sentence imposed on the applicant upon his plea of guilty to three counts of armed robbery, on 16 March, 27 March and 5 April 2001 and to one count of attempted armed robbery on 23 April 2001. The sentence imposed was one of 12 years' imprisonment for each of the offences to be served concurrently.

The circumstances of the offences are that the applicant committed the three armed robberies on financial institutions over a 20 day period. It appears that on all three occasions the applicant entered the premises of a bank or credit union wearing long dark clothing and a balaclava.

On the first occasion, the applicant entered a credit union. He was carrying a carrybag and a sawn off .22 calibre rifle which he pointed in the direction of the staff. He said words to the effect of "No-one here wants to get hurt, give me the money, put it in the bag." He made further demands for money which were complied with.

On the second occasion, the applicant entered a bank, again wearing a balaclava and carrying a bag and sawn-off rifle. He pointed the rifle at one of the five employees present. There was also one customer present. He made verbal demands which were complied with.

On the third occasion, the applicant returned to the credit

union the subject of the first armed robbery and pointed the rifle towards a customer of the bank, telling the customer to turn around. The effects of the applicant's offence on one of the staff members was outlined in a victim impact statement.

The proceeds of the first armed robbery were $6120, the proceeds of the second were $7280 and the proceeds of the third were $6320.

The circumstances of the offence of attempted armed robbery are that the police commenced surveillance of the applicant, following him to a shopping centre where there was a bank nearby. On that occasion, the applicant left his vehicle carrying a black carrybag that was intercepted by the police, who found in the bag a pair of gloves, a balaclava and a shortened rifle which contained live ammunition.

Upon his arrest the applicant admitted the offences. It appears that the applicant suffers from a heroin addiction and the offences were committed to support his addiction. The proceeds of the successful robberies were in the vicinity of some $19,000 and were spent on drugs.

The applicant is 40 years of age. He has a prior criminal history commencing in 1981. Of particular relevance are three previous convictions of armed robbery. On 23 March 1994, he was sentenced to four and a half years' imprisonment with a recommendation for parole after nine months for one such

offence.

On 7 October 1994 he was sentenced to seven years' imprisonment with a recommendation for parole after nine months for two armed robbery offences and certain other offences. In 1995, the applicant was convicted of offences of false pretences and receiving, which were committed whilst on work release and which resulted in a cumulative sentence of imprisonment. The applicant was discharged from custody on 1 March 2000.

In imposing the present sentences, the learned sentencing Judge took into account the serious nature of the offence, the fact that a loaded firearm was used, the applicant's criminal history, and the serious impact the offences had on the victims, finding the appropriate head sentence would have been one of 14 years' imprisonment or more.

His Honour discounted this, taking into account the applicant's cooperation with the police, his plea of guilty, as well as the fact that the offences were to support the applicant's heroin addiction. As I have said, the sentence imposed was one of 12 years' imprisonment.

The applicant submits that this sentence is manifestly excessive. Although no written submissions were provided, the applicant stated in oral submissions that the learned sentencing Judge's sentencing discretions miscarried on a

number of grounds.

The applicant submitted that the learned sentencing Judge's discretion miscarried because the learned sentencing Judge proceeded on an erroneous basis with respect to the applicant's criminal history. In this regard the applicant stated that the prior convictions for armed robbery in 1994 were in respect of offences committed at about the same time but were the subject of separate criminal proceedings, so that separate convictions resulted. All the material in respect of the applicant's criminal history was before the learned sentencing Judge and I do not consider any error has been shown in this regard.

Further, as regards the attempted armed robbery, the applicant referred to the fact that when he was intercepted by the search team, he was in fact leaving the premises, not entering them. Again, the circumstances of the offence were before the learned sentencing Judge and I do not consider that this raises a matter showing miscarriage of the sentencing discretion.

The applicant contends that the comparative sentences referred to by the Prosecution to the learned sentencing Judge were not truly comparative.

The applicant also sought to rely on Hammond's case in respect of the connection between the offences and his heroin

addition. The applicant also submitted that insufficient regard was had to his plea of guilty and his cooperation with police.

Counsel for the respondent submitted that the offences were serious examples of armed robbery, although in oral submissions counsel for the respondent appeared to concede that they were at the lower end of the range of cases that could be used as comparative.

The respondent submitted that the sentence imposed was within the appropriate range, that being 11 to 15 years' imprisonment, and that the approach taken by the learned sentencing Judge in reducing the head sentence was generous to the applicant in that the applicant was given credit for the unsuccessful steps taken to rid himself of his heroin addiction.

In my opinion, the learned sentencing Judge's discretion did miscarry in that the learned sentencing Judge failed to give sufficient discount for the early plea of guilty and the applicant's cooperation with the police and therefore the sentence imposed was manifestly excessive.

The sentencing discretion must therefore be exercised afresh. I consider that an appropriate sentence, bearing in mind the mitigating factors in this case and the early plea of guilty and the cooperation with police is one of 10 and a half years'

imprisonment.

I would therefore grant the application, allow the appeal to the limited extent of substituting for the 12 years' imprisonment imposed one of 10 and a half years' imprisonment. I would otherwise confirm the sentence imposed at first instance.

THE PRESIDENT: I agree.

BYRNE J: I agree.

THE PRESIDENT: That is the order of the Court.
